

**BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS ON BEHALF OF
THE SECRETARY OF STATE**

STATE OF COLORADO

CASE NO. OS 2004-0016

AGENCY DECISION GRANTING MOTION TO DISMISS

**IN THE MATTER OF THE COMPLAINT FILED BY NOEL WEST LANE, III,
REGARDING ALLEGED CAMPAIGN AND POLITICAL FINANCE VIOLATIONS
BY JEAN KELLY, JEFFERSON COUNTY R-1 SCHOOL DISTRICT,
JEFFERSON COUNTY R-1 SCHOOL DISTRICT BOARD OF DIRECTORS, and
FOOTHILLS PARK AND RECREATION DISTRICT**

Nature of the Case

On August 27, 2004, the Colorado Secretary of State referred a complaint filed by Noel West Lane, III (Complainant) to the Division of Administrative Hearings pursuant to Article XXVIII, § 9(2)(a) of the Colorado Constitution. Hearing was originally set for September 7, 2004. The matter was continued and reset for hearing on October 18, 2004.

In this case, the Complainant alleges that Principal Jean Kelly, the Jefferson County School District R-1, and its Board of Education (School Respondents) as well as the Foothills Park and Recreation District (FPRD) made expenditures of public money in favor of a local ballot issue and in doing so violated the Fair Campaign Practices Act¹.

On September 14, 2004, the School Respondents filed a Motion to Dismiss or in the Alternative Summary Judgment. The FPRD, in its hearing brief, adopts the arguments of the School Respondents and also seeks an order of dismissal.

Undisputed Facts

1. On April 22, 2004, an orientation program was held at West Jefferson Middle School. Jean Kelly is the principal of the school.

¹ In response to the parties' motions, Complainant also alleges violations of Special District Act provisions. The ALJ lacks jurisdiction over issues governed by the Special District Act. Additionally, the factual predicate for the complaint filed with the Secretary of State is Complainant's affidavit dated August 16, 2004, which is limited to events occurring on April 22, 2004. Accordingly, this decision is limited to the allegations in Complainant's August 16, 2004 affidavit.

2. At that orientation, persons in the school were soliciting signatures for a petition regarding the inclusion of real property in the Conifer area into the boundaries of the existing FPRD.
3. Prior to the commencement of the orientation meeting, Principal Kelly encouraged the program participants to sign the petition.
4. FPRD made the determination to proceed with an inclusion election of the Conifer area property by Resolution after a public meeting on August 24, 2004.
5. Prior to August 24, 2004, the issue of inclusion was one of discussion and consideration within the Conifer area and to the FPRD.
6. As of September 2, 2004, the District Court had not yet ordered the inclusion election. Until the District Court order is obtained, the FPRD cannot submit the ballot issue to Jefferson County.
7. At the time of hearing in this case, there was no local ballot issue.

Applicability of the Fair Campaign Practices Act

The Fair Campaign Practices Act provides, in pertinent part, that no political subdivision shall “expend any public moneys from any source, or make any contributions, to urge electors to vote in favor or against any . . . local ballot issue that has been submitted for the purpose of having a title filed pursuant to section 31-11-111 [or any] referred measure, as defined in section 1-1-104 (34.5).” Section 1-45-117(1)(a)(I)(B) & (C), C.R.S. (2004).

Section 32-1-401, C.R.S. sets out the procedures for including property within a special district, such as the FPRD. An inclusion may be effected by citizen petition or by resolution of the district’s governing body. In either case, the matter must first be referred to the applicable court, which, in turn, directs the matter to be placed on the ballot. The reference to the court cannot occur until a resolution is finalized. § 32-1-401(5).

A “referred measure” as used in the Fair Campaign Practices Act is defined as “any ballot question or ballot issue submitted by . . . governing body of any political subdivision to the eligible electors of the . . . political subdivision.” § 1-1-104(34.5), C.R.S. (2004). The submission occurs when the governing body takes official action to certify the ballot question to the county clerk and recorder. The FPRD did not take any such action prior to August 24, 2004.

The Fair Campaign Practices Act regulates the conduct of public entities only after an issue has become a local ballot issue that has been submitted for the purpose of having a title fixed or referred measures. Neither event occurred prior to the April 22, 2004 orientation program at West Jefferson Middle School.

Therefore, Complainant's complaint must be dismissed for failure to state a claim upon which relief can be granted.

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that the Complainant's complaint filed with the Secretary of State on August 27, 2004 must be dismissed for failure to state a claim upon which relief can be granted as the Fair Campaign Practices Act does not apply. Pursuant to § 1-45-111(2)(a), C.R.S., the decision of the ALJ shall be final and subject to review by the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S.

DONE AND SIGNED

October 19, 2004

Michelle A. Norcross
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct copy of the above **AGENCY DECISION GRANTING MOTION TO DISMISS** by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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and

William A. Hobbs
Deputy Secretary of State
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on this ____ day of October 2004.

Technician III